

## **REMARKS**

This amendment includes a response to the office action dated January 22, 2003 and the subsequent telephone conversation between the Examiner and Applicant's Attorney. In addition, issues related to the original office action dated September 26, 2001 are also discussed herein. A detailed discussion of each item in the office action follows.

## **THE WITHDRAWN CLAIMS**

In item 1 of the office action dated January 22, 2003, claims 2-21 were withdrawn by the Examiner as being distinct from the originally filed claim 1. Pursuant to the Examiner's comments in the office action, and also pursuant to Applicant's Attorney's telephone conversation with the Examiner, Applicant's Attorney is canceling claims 2-21 and providing new claims 22-41.

New claims 22-31 are apparatus claims with a single independent claim 22. New apparatus claim 22 contains all of the limitations of the originally filed claim 1. In addition, claim 22 also contains extra limitations which to distinguish claim 22 over Henry. The difference between Henry and new claim 22 is discussed more fully below.

In addition to the new apparatus claims, Applicant's Attorney has also provided 10 new method claims 32-41 which are directed to a method of using the apparatus of claims 22-31. Applicants attorney believes that these method claims are not patently distinct from the new apparatus claims 22-31.

## **THE HENRY PATENT**

In the original office action, claim 1 was rejected under 35 U.S.C. 102(b) as being anticipated by Henry. Claim 1 is canceled, however, new claim 22 incorporates all the limitations of the original claim 1. In addition, Applicant's Attorney has added new limitations to claim 22

over and above those originally found in claim 1 which further distinguish Applicant's invention from Henry. In general, Applicant's claims are directed to a bidirectional information transfer mechanism for the transfer of social information which is intended to allow individuals to make rapid decisions as to whether or not they are interested in initiating a social relationship. This is substantially different from the purpose of Henry, which is an identification bracelet used to provide medical data describing an individual's health in a uni-directional fashion to emergency personnel. The Henry device is typically used to store medical information in the event that the wearer is incapacitated and cannot communicate with medical personnel.

In contrast to Henry's medical bracelet, Applicant's invention is designed to facilitate and invite bidirectional social communication between individuals meeting for the first time in a social setting. Applicant's invention saves time by allowing individuals to more rapidly determine whether or not they wish to spend time to become acquainted with someone based on personality traits, interests, etc. Applicant's invention is a bidirectional semaphore system designed to allow two or more individuals to communicate not only their own interests and preferences, but also to communicate what interests and traits they are looking for in other people. That allows an individual to understand what another individual is interested in, and in combination with the same semaphore system worn by the other individual, it allows both individuals to quickly determine if they may have an interest in one another. It is essentially a two-way communications system for use in social settings. Henry, on the other hand, is a one-way communications system designed to provide information related to emergency personnel when the individual is incapacitated.

Applicant's Attorney has added limitations to the new apparatus claims 22-31 which are specifically directed to the social and bidirectional nature of the information transfer between individuals provided by Applicant's invention. Further, Applicant's Attorney believes that Applicant's invention is not anticipated by Henry for the following reasons:

1. Henry is not known or capable of performing the function of this invention, nor does it teach the disclosure of this invention.

2. Henry does not disclose the purpose, means or mechanism that this invention discloses.
3. Henry does not solve the problems that this invention solves.
4. Henry does not disclose each and every element of this invention.
1. **Henry is not known or capable of performing the function of this invention, nor does it teach the disclosure of this invention.**

There is not anticipation by a prior patent not known or recognized as being capable of performing the function of the patented device, but rather the prior patent must itself do the teaching. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 221 U.S.P.Q. 385 (1984); Edstrom-Carson & Co. v. Onsrud Machine Works, Inc., 129 U.S.P.Q. 457.

(Henry is not capable of functioning the same as this invention because Henry only provides a bracelet which holds medical information for emergency personnel in the event that an individual is incapacitated and cannot speak directly to those medical personnel. Applicant's invention provides a bidirectional communications system which allows to multiple individuals to communicate their likes and dislikes to one another so that they can make a quick initial determination as to whether they wish to initiate a social relationship with one another. In fact, Applicant's invention invites two-way communication between individuals who are able to communicate, whereas Henry is limited to the situation where no communication is available because one of the parties is unconscious or incapacitated. Likewise, Henry is directed to system for rendering emergency medical treatment, while Applicant's invention is directed to allowing an individual to more effectively use their time when seeking to meet others.

Applicant's new claims have limitations directed to this fundamental functional difference between Applicant and Henry. Applicant's Attorney believes that due to the limitations in the

new claims, Henry does not anticipate Applicant's invention.

2. **Henry does not disclose the purpose, means or mechanism that this invention discloses.**

There is no anticipation where a reference does not disclose the purpose, means and mechanism for accomplishing the instant invention but rather is restricted to a limited and different means. Sperry Products, Inc. v. Aluminum Company of America, 120 U.S.P.Q. 362.

The goals or objects of Applicant's invention, without limitation, are to assist individuals, both male and female, to more efficiently meet other individuals for social purposes. In a social setting, individuals typically prefer to meet others with like interests or with specific qualities. Unfortunately, in today's world, an individual cannot immediately tell much about the character or traits of another individual when they initially meet. As a result, this creates a situation where an individual may spend a considerable amount of time with someone before they find out they are incompatible.

Applicant's invention provides a bidirectional information transfer system which allows both individuals to indicate to others some important qualities about them and what type of companion they seek. Applicant's system is intended to allow individuals with like interests to quickly identify one another. Prior to Applicant's invention, there was no convenient and discrete way of signaling to another person what an individual's interests and characteristics are. As a result, individuals may waste substantial amounts of time in social interaction with others before they realize that the other individual is incompatible with them.

Henry is limited to what is, in effect, a container for storing medical information related to an unconscious or incapacitated individual. It does not teach or suggest any method for two or more individuals to discretely and quickly indicate to each other their social interests and traits which the other individuals may find important in making a decision to initiate a social

relationship.

Henry cannot meet these objects to the extent that Applicant's invention can, because it is specifically designed to remedy the situation where communication is not possible, rather than invite communication between two interested individuals.

Further, the mechanisms by which this invention accomplishes the forenamed objects is substantially different from Henry. This invention includes a structural means to provide a universal semaphore system which list general categories of social traits (e.g., liberal, conservative, etc.), social status (e.g., married, single, etc.) which are used by individuals in a social setting to more rapidly identify individuals with desirable traits, which in turn allows those individuals to more rapidly initiate social contact. There is no such mechanism described by Henry, which contains discrete information related to any number of specific medical conditions. In fact, even the information contained in the Henry device may be enclosed within the device such that the cannot be easily observed without the medical personnel actually opening the device. Applicant's device is designed to provide information to a casual observer without any significant act on the part of the observer.

**3. Henry does not solve the problems that this invention solves.**

There is no anticipation if a prior patent does not solve the problem(s) which the subsequent patent successfully solves. Technical Development Corporation v. Servo Corporation of America, 125 U.S.P.Q. 133.

Henry solves the problem related to emergency medical assistance. In particular, Henry provides emergency medical personnel with particular medical information related to an individual. Henry has no value in terms of its ability to assist individuals to meet one another in a social setting, and in fact is directed to situations where communication between individuals is not possible. Applicant's invention is substantially different in that a provides a uniform semaphore

system which allows two individuals with like interests and desires to immediately identify one another so that communication can begin.

4. **Henry does not disclose each and every element of this invention.**

There is no anticipation if the reference does not disclose each and every element of the claimed invention. SSIH Equipment S.A. v. United States International Trade Commission, 718 F.2d 365, 218 U.S.P.Q. 678 (1983).

Henry does not disclose a means to provide a semaphore system which is easily visible to, and readable by, other individuals. It does not provide a system which allows bidirectional communication of social information between conscious individuals to assist in the formation of social relationships. Applicant's invention is specifically directed to communication between individuals. The claims in Applicant's invention have been amended to emphasize this feature which is not found in Henry.

The apparatus claims have elements specifically directed to the bidirectional communication features provided by Applicant's invention which do not appear in Henry. For all the reasons set forth above, Applicant's Attorney believes that Applicant's invention is not anticipated by the Henry reference.

**THE NEW METHOD CLAIMS 32-41**

In addition to the apparatus claims which are based on original claim 1, Applicant's Attorney has also drafted a parallel set of method claims 32-41 which are directed to the use of the apparatus claims by claims 22-31. Applicant's Attorney believes that new independent apparatus claim 22 and new independent method claim 32, which is directed to the use of the device in claim 22, cannot be independently practiced without infringing one another.

## CONCLUSION

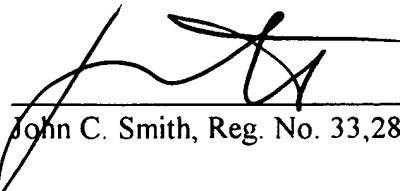
Applicant's Attorney thanks the Examiner for the Examiner's help in prosecuting this invention. In response to the office action, Applicant's Attorney has canceled the method claims which were withdrawn by the Examiner in the office action, and provided 20 new apparatus and method claims. The independent apparatus claim 22 incorporates all the limitations of original claim 1, and in addition, includes new limitations which Applicant's Attorney believes will further distinguish it from Henry. Applicant's Attorney has been careful to avoid the introduction of new matter. Applicant's Attorney believes that all items in the office action dated January 22, 2003 have been addressed, and respectfully requests the Examiner to reconsider the new claims with a view towards allowance. Applicant's Attorney further invites the Examiner to contact Applicant's Attorney for a telephonic interview at the above listed number if the Examiner believes that prosecution of the application can be furthered by so doing.

Respectfully submitted,

By:   
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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Box Amendment, Assistant Commissioner For Patents, Washington, D.C. 20231

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Date of Deposit

  
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Signature Date